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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 511

EDWARD J. SIMONS, et al.,
Petitioners,

vs.

JERRY VINSON and A. P CLARK, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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Respondents in this case are lessees operating oil wells in the channel of the Red River under leases from the

United States of America and an oil purchaser (Bell Oil and Gas Company) which has purchased crude oil produced by the lessees and has paid the United States of America and the lessees for such oil. The underlying dispute is whether the lands on which the wells are located are owned by the United States of America or by petitioners.

The Complaint named certain federal agencies charged by law with the management of federally owned lands in the area of the leases (Bureau of Land Management, Bureau of Indian Affairs and Department of the Interior). Petitioners sought, inter alia, to enjoin the federal officials and agencies from issuing further leases on the lands in controversy, asserted ownership of the lands and asked for an injunction to enjoin all defendants from interfering with the alleged title of the petitioners to such lands. Petitioners further sought damages from the lessees and an accounting from the oil purchaser which would require it to account to them for all of the oil it has purchased (and paid for in good faith) from the lessees and the United States of America.

Petitioners recognized at the outset that they were confronted with the fundamental rule that an action to recover possession of land held by a tenant and an accounting for minerals severed by the tenant during his lease cannot be maintained against the tenant unless the landlord is joined as a party. Otherwise, a tenant is put to the burden of proving his landlord's title in an action where the decision might bind the tenant and not the landlord.

Petitioners also recognized the accepted rule that the United States of America cannot be sued without its consent and they realized that the United States had not consented to be sued in the type of action they proposed to file.

Faced with these problems, petitioners contrived the ingenious, but thin, artifice of attempting to join the United States Department of Interior and its Bureau of Land Management and Bureau of Indian Affairs as defendants.

Both the District Court and the Court of Appeals recognized the artifice as "an unsophisticated attempt to avoid the defense of governmental immunity by naming as defendants the officers of the particular government agencies and alleging that these officers acted beyond their authority."

The device is unsophisticated because it will not bear even a cursory scrutiny. The fundamental issue in this case is the *title* to the lands involved. Title and ownership are either vested in the United States of America, as a sovereign, or in petitioners (or other owners) but not in the Department of Interior, Bureau of Land Management or Bureau of Indian Affairs. These agencies have been vested by statutes of the United States with certain supervisory functions over the lands; but Congress may, at any time, delegate such authority to other officers and agencies.

If the title dispute were between petitioners and Standard Oil Company or any other corporate owner, no court would consider it adequate to make the President or any other officer of the corporation a defendant, in lieu of the corporate owner. The attempt to litigate title to the lands of the United States by suing only subordinate agencies of the government is no less bizarre.

This Court has recognized the rule that ". . . under settled principles, title to land in possession of the United States under a claim of interest cannot be tried as against the United States by a suit against persons holding under the authority of the United States." *Leiter Minerals, Inc.*

v. *United States*, 352 U.S. 220, 77 S.Ct. 287, 1 L.Ed.2d 267 (1957). Petitioners' attempt to circumvent the rule by joining federal agencies cannot be countenanced. This Court has recognized that suits to enjoin federal officers from administering property of the United States is a suit against the United States, *Larson* v. *Domestic & Foreign Commerce Corporation*, 337 U.S. 682, 69 S.Ct. 1457, 93 L.Ed. 1628 (1949), and that the character of the relief sought, not the denomination of the parties, determines whether a suit is a suit against the United States. In the instant case it is clear that petitioners are seeking to establish effective title and ownership of the lands in controversy and this dispute is between the United States itself and petitioners.

Petitioners' reliance upon *United States* v. *Lee*, 106 U.S. 196, 1 S.Ct. 240, 27 L.Ed. 171 (1882), and its sequel, *Land* v. *Dollar*, 330 U.S. 731, 67 S.Ct. 1009, 91 L.Ed. 1209 (1947), is inappropriate. In *Malone* v. *Bowdoin*, 369 U.S. 643, 82 S.Ct. 980, 8 L.Ed.2d 168 (1962), this Court recognized that those cases were part of a series of apparently conflicting decisions and that it had in the *Larson* case, *supra*, resolved "the conflict in doctrine" and "made an informed and carefully considered choice between the seemingly conflicting precedents." *Malone* and *Larson*, *supra*, have adequately established the general doctrine applicable to cases like the present and there is no compelling reason why the time and energies of this Court should be consumed to deal with each little innovation counsel may from time to time contrive to evade or avoid the impact of the rulings in those cases. The case presents no questions of general importance sufficient for review on certiorari, the lands involved are not extensive and none of the sovereign parties involved have deemed this small

controversy significant enough to warrant action on their part. For these reasons, the Petition for a Writ of Certiorari should be denied.

Little need be said with respect to the alternative Motion For Leave To Intervene in No. 18 Original, October Term, 1922, and in No. 15 Original, October Term, 1923, involving controversies among the United States and the States of Texas and Oklahoma. This is an attempt by private citizens to reopen an old controversy among sovereigns which they have not sought to reopen. There is no fund in the custody of an officer of this Court to which movants are asserting a claim and while the decrees in those cases did establish boundaries which are determinative of title the Court surely did not intend that the Original jurisdiction invoked in those cases should provide a perpetual vehicle in which private citizens might litigate forever the daily course of the Red River.

The Court's Original jurisdiction is a limited jurisdiction, and "manifestly intended to be sparingly exercised", *State of California* v. *Southern Pac. Co.*, 157 U.S. 229, 261, 15 S.Ct. 591, 604, 39 L.Ed. 683, 695 (1895), and this rule should clearly be observed where the effect of granting the Alternative Motion would be to saddle this Court with a controversy involving private citizens of two States where neither State has sought relief.

The attempt to disguise the character of the relief sought by the Alternative Motion as "ancillary relief" does not surmount the bar of the immunity of the United States to suit as its sovereign immunity extends to suits of every class and is not dependent upon whether the suit is an original suit or a suit for ancillary relief, *Illinois Central*

Railroad v. Public Utilities Comm., 245 U.S. 493, 38 S.Ct. 170, 62 L.Ed. 425 (1918).

Respectfully submitted,

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